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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,676	07/03/2003	Hubert Remmlinger	ZAHFRI P520US	7283
20210	7590	11/26/2004	EXAMINER	
DAVIS & BUJOLD, P.L.L.C. FOURTH FLOOR 500 N. COMMERCIAL STREET MANCHESTER, NH 03101-1151			LARKIN, DANIEL SEAN	
		ART UNIT	PAPER NUMBER	
			2856	

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/613,676	REMMLINGER ET AL.	
	Examiner	Art Unit	
	Daniel S. Larkin	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 September 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 12,13,17,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 12,13,17 and 19 is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) 20 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The amendment filed 03 July 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The connection of a display (12), a computer screen, an indicator, a warning light, etc. to the electronic unit 8 to indicate to the operator of the machine or the transmission that servicing of the machine or transmission is desired or necessary. Additionally, the addition of the "display 12" to the drawing figure is not supported by the original disclosure. Applicants' foreign priority document fails to indicate that a display 12 is utilized in the invention.

Applicants are required to cancel the new matter in the reply to this Office Action.

Claim Objections

2. Claim 20 is objected to because of the following informalities:

Re claim 20, claim line 1: This claim is depended from canceled claim 18.

Appropriate correction is required.

Allowable Subject Matter

3. Claims 12, 13, 17, and 19 are allowed.

4. Claim 20 would be allowable if rewritten to overcome the objection, set forth in this Office action.

Response to Arguments

5. Applicants' arguments filed 16 September 2004 have been fully considered but they are not persuasive.

In response to applicants' argument that the preliminary amendment did not introduce new matter because the amendment was filed with the original application papers on the day the application was filed within the Patent Office, the examiner respectfully disagrees that this explanation is not the entire situation. The examiner agrees with applicants' assertion that the preliminary amendment was filed with the original application papers; however, the completion or non-completion of the oath or declaration with respect to the filing of the preliminary amendment also must be considered as well. In this instance, applicants presented an executed declaration with the originally filed papers. The declaration did not indicate that an amendment was accompanying the originally filed papers. The MPEP cites two clear situations as to how to treat preliminary amendments filed with the originally filed application. First, if an amendment is filed on the same day that the application under 35 CFR 1.53(b) is filed and referred to in the original oath or declaration with or after the application, the amendment constitutes a part of the original application papers and the question of new matter is not considered MPEP 602 V. Second, where a 37 CFR 1.53 (b) application is filed without a signed oath or declaration and the such application is accompanied by an

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amendment, that amendment is considered a part of the original disclosure. The subsequently signed oath or declaration must refer to both the application and the amendment M.P.E.P 608.04(b).

Applicants' situation is neither of these situations. In the first situation, the amendment must be referred to in the signed oath or declaration. The applicants provided a signed declaration, but did not refer to the amendment being filed with the original application papers. In the second situation, if an oath or declaration has not been executed, then applicants may submit an supplemental oath or declaration referring to both the application and the amendment. Again, applicants submitted an executed declaration, so a supplemental declaration is not appropriate for this situation. Clearly, neither of these two situations apply to the situation in this application; therefore, it is the examiner's opinion that the preliminary amendment filed 03 July 2003 constitutes new matter.

Conclusion

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Larkin whose telephone number is 571-272-2198. The examiner can normally be reached on 8:00 AM - 5:00 PM Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel Larkin
AU 2856
18 November 2004


DANIEL S. LARKIN
PRIMARY EXAMINER